



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-30

SUBJECT: GARY WATERS, MEMBER,
NEVADA STATE BOARD OF EDUCATION

**SUPPLEMENTAL INFORMATION FOR THE PANEL
JANUARY 19, 2007**

A. ADDITIONAL INVESTIGATIVE ACTIVITIES:

During the Panel Proceeding of September 8, 2006, the panel members requested additional information relating to the contractual and financial relationships between the fiscal agent administering the grant monies, Mr. Waters, and the Center for Health and Learning (center). Specifically, the Panel directed staff to obtain additional information regarding whether Mr. Waters received compensation directly or indirectly from the fiscal agent, Southern Nevada Health District, for any services performed by Mr. Waters on behalf of the center.

- Interviewed Mr. Waters to obtain additional information for supplemental report
- Obtained and reviewed documentation relating to the financial and contractual relationships between the Southern Nevada Health District, Mr. Waters, and the Center for Health and Learning (Supplemental TAB B)
- Memorandum dated October 4, 2006, from Keith Rheault, Nevada Department of Education Superintendent of Public Instruction, to the Nevada Commission on Ethics (Supplemental TAB C)
- Information from the Center for Health and Learning Board of Directors (Supplemental TAB D)

B. RECOMMENDATIONS:

Based upon the additional investigative activities, it is hereby recommended that the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (2)
- NRS 281.481 (7)
- NRS 281.501 (2)
- NRS 281.501 (4)

SPECIFIC REASON:

There are no allegations or credible evidence of fact that amounts to or supports a violation by this public officer of the provisions of NRS Chapter 281.

C. SUMMARY OF SUBJECT'S SUPPLEMENTAL RESPONSE:

In response to the concerns expressed during the panel proceeding, Mr. Waters submitted the following supplemental response:

The Center for Health and Learning board members handle the fiscal administration of the center. Mr. Waters is involved in the fiscal administration only as a volunteer staff person. The only compensation he received from the center was reimbursements for mileage and travel associated with the Trust Fund for Public Health grant. He subsequently donated those reimbursements to the center to be used for other project activities and needs as determined by the board of directors.

The center intends to contract for services under various grants without any connect to either the Nevada Department of Education or the Nevada State Board of Education. The center has yet to receive any funds from these future grants. Mr. Waters has never had a contract with the center. His relationship to the center has always been that of a volunteer. He is one of approximately thirteen volunteers. Mr. Waters represented the center at several community planning and coordination meetings and trainings in 2005 and 2006 in which health district staff have been present. However, the status of Mr. Waters has always been that of a volunteer and other volunteers have also attended meetings with health district staff. The center has no employees.

Any decision to contract with Mr. Waters in the future would be determined exclusively by the center's board of directors. However, in mid-2006, the Nevada Department of Education made a one-time disbursement of funds to the center under the Trust Fund for Public Health. This is the fund for which the Southern Nevada Health District acted as fiscal agent until December 31, 2005. It is also the fund for which a sub-grant was issued to the Department of Education for the continuation of the project from January 1, 2006 through June 30, 2006. This one-

time disbursement was a donation from Mr. Waters to the center of funds payable to Mr. Waters under his contract funded by the Trust Fund for Public Health. The center never had a contract with the Southern Nevada Health District. The only contracted services were between the health district and Mr. Waters and any others listed as contractors in the approved grant. (Historically, Mr. Waters has also had other contracts with the health district.)

No professional services agreement or contract was entered into between himself, the center, or the Department of Education when the fiscal agent responsibilities were transferred from the Southern Nevada Health District to the Nevada Department of Education. No agreement was necessary because the official fiscal agency remained with the Clark County Health District and only the method of disbursement changed. The grant deliverables and decisions remained exclusively in the authority of the Clark County Health District and the Trust Fund for Public Health. The Trust Fund for Public Health approved all disbursement procedures and was the exclusive authority on all procedures including fiscal disbursement processes for the grant. The Southern Nevada Health District has always been the fiscal agent for the Nevada Trust Fund for Public Health Grant. He further stated that, in May 2006, the Nevada Department of Education provided disbursement of funds in accordance with the long-standing grant. It is the understanding of both Mr. Waters and the center's board of directors that the Southern Nevada Health District remained as fiscal agent. Only the method of disbursement changed for the one-time disbursement of funds that occurred May 2006.

D. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501¹.

(b) "Unwarranted" means without justification or adequate reason.

¹NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

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8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

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7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

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2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

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4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
 - (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
 - (c) In which he has a pecuniary interest,
- without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

E. RESULTS OF SUPPLEMENTAL INVESTIGATION:

Documentation relating to the financial and contractual relationships between the Southern Nevada Health District, Mr. Waters, and the Center for Health and Learning was obtained from the health district. The documentation indicates a financial and contractual relationship between the health district and Mr. Waters, but no financial or contractual relationship involving the Center for Health and Learning. Marlene Kolicius, grants manager for the health district, stated that the health district has never had a relationship of any kind with the Center for Health and Learning.

October 4, 2006, Keith Rheault, Nevada Department of Education Superintendent of Public Instruction, submitted a memorandum to the Nevada Commission on Ethics. The memorandum clarified the relationships between the Department of Education, Mr. Waters, and the Center for Health and Learning relative to Mr. Water's membership on the Nevada State Board of Education. The following is the substance of Dr. Rheault's memorandum:

The Nevada Department of Education has historically and routinely made arrangements with community, non-profit organizations to facilitate funding for special programs. Such arrangements are in the best interest of the State of Nevada and do not provide benefit or advantage specifically to any member of the Nevada State Board of Education or the Nevada Department of Education. In 2006, Dr. Reault approved such an arrangement with the Clark County Health District to assist in the suicide prevention program being conducted by the Center for Health and Learning. No advantage or favor was done in consideration of or provided to Mr. Waters relative to his position as a member of the Nevada State Board of Education. Neither Mr. Waters nor the Center for Health and Learning requested that the project funding be transferred to the Department of Education. Neither Mr. Waters nor the Center for Health and Learning asked to receive any other education funding for programs or services offered by the Center for Health and Learning or Mr. Waters personally.

The only assistance given to the Center for Health and Learning by the Department of Education was an offer to allow the center to use vacant office space in Las Vegas. This same offer is extended to the Nevada Public Education Foundation.

During Nevada Board of Education meetings, Mr. Waters has routinely disclosed the scope of work of the Center for Health and Learning and his involvement in the center's work and has distributed information and materials regarding program and services of the center. In all of the disclosures made by Mr. Waters, there was no request for financial or in-kind assistance of any type from the Nevada Department of Education. In April/May of 2006 and May of 2005, Member Waters, during the public comment period at the Nevada State Board of Education regular meeting, introduced graduate student volunteers of the center. During these two presentations, he provided oral and written information regarding his role, involvement and affiliation with the center. On two occasions in 2005-2006, Mr. Waters and the center provided the State of Nevada no-cost assistance in the delivery of suicide prevention information by way of presentations and continuing education workshops to Nevada school administrators and the Southern Nevada Regional Professional Development Center. This was a considerable value to public education and the teachers who participated.

The State Board of Education has not voted to approve or implement any regulations concerning supplemental health programs in public schools. The State Board of Education will not be conducting any hearings or workshops regarding supplemental health programs available to public schools in 2006. Consideration, if any, of supplemental programs would require the approval of the Nevada State Board of Education after January 2007, at which time Mr. Waters will not be a member due to his not running for re-election.

The Board of Directors for the Center for Health and Learning has submitted documentation that indicates that Mr. Waters has received no compensation from the center.

Allegations regarding NRS 281.481(2):

There is no evidentiary basis to support the allegation that Mr. Waters acted in violation of NRS 281.481(2). Mr. Waters receives no compensation from the Center for Health and Learning and the regulations he is proposing will not create a sole source environment for services offered through the center. Additionally, similar organizations are also allowed to use the Department of Education facilities when available.

Allegations regarding NRS 281.481(7):

There is no evidentiary basis to support the allegation that Mr. Waters acted in violation of NRS 281.481(7). The Superintendent of Public Instruction has indicated that he sees the Center for Health and Learning as similar to other non-profits with which the Nevada Board of Education works as established under NRS 385.091. It appears that any use of government property and

equipment was authorized, did not interfere with the performance of any public officer's duties to the public, and the cost or value related to the use was nominal, and there is no evidence indicating that Mr. Waters received personal or financial gain from the center.

Allegations regarding NRS 281.501(2):

There is no evidentiary basis to support the allegation that Mr. Waters acted in violation of NRS 281.501(2). As was indicated by the Nevada Department of Education superintendent of public instruction, no hearings or workshops regarding the matter of supplemental health programs will be conducted during Mr. Waters remaining term in office.

Allegations regarding NRS 281.501(4):

There is no evidentiary basis to support the allegation that Mr. Waters acted in violation of NRS 281.501(4). There is no evidence indicating that Mr. Waters received personal or financial gain from the center. Furthermore, the center's existence was well known by Department and Board of Education personnel, some of whom are also involved as volunteers with the center.

F. CONCLUSION:

Based on these additional investigative activities, the Executive Director hereby recommends that the panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on the allegations that Mr. Waters violated NRS 281.481(2), NRS 281.481(7), NRS 281.501(2) and NRS 281.501(4). It is further recommended that this complaint be dismissed.

Prepared by: Matt C. DiOris DATED: December 7, 2006
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: December 12, 2006
L. PATRICK HEARN
EXECUTIVE DIRECTOR